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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| SCULLY NOLAND, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 85A04-0609-CR-478 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE WABASH CIRCUIT COURT
The Honorable Robert McCallen, III, Judge
Cause No. 85C01-0509-FC-109

**March 7, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Scully L. Noland (Noland), appeals his sentence for possession of a controlled substance, a Class D felony, Ind. Code § 35-48-4-7(a).

We affirm.

## ISSUE

Noland raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court appropriately sentenced Noland.

## FACTS AND PROCEDURAL HISTORY

On September 2, 2005, at approximately 1:00 a.m., Noland was intoxicated and wanted to go to the liquor store. His sixteen-year-old friend offered to drive him. After going to the store, the two were found by a Wabash police officer in a vehicle in Wabash City Park. Several pills, including hydrocodone, were found in the vehicle.

On September 8, 2005, the State filed an Information charging Noland with Count I, possession of a schedule V controlled substance, a Class C felony, I.C. § 35-48-4-7(a)(2); Count II, contributing to the delinquency of a minor, a Class A misdemeanor, I.C. § 35-46-1-8; and Count III, public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3. The State later amended the Information to add Count IV, possession of a controlled substance, a Class D felony, I.C. § 35-48-4-7(a). On June 12, 2006, pursuant to a plea agreement, Noland pled guilty to possession of a controlled substance, a Class D felony, in exchange for the State dismissing all other Counts. On July 24, 2006, the trial court sentenced Noland to an executed sentence of three years. In doing so, the trial court

found no mitigating circumstances and one aggravating circumstance – Noland's criminal history.

Noland now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Noland argues the trial court overlooked many mitigating factors, and that his sentence is inappropriate due to the nature of the offense and his character. Specifically, Noland contends the trial court failed to recognize (1) his guilty plea, (2) that the conduct in this case lasted a short period of time, (3) no one else was endangered, and (4) his family's hardship due to his incarceration as mitigating factors. At the same time, he maintains that the trial court placed "exaggerated significance" on his criminal history. (Appellant's Br. p. 9). Further, Noland alleges that there are circumstances that would make the nature of this crime more heinous – injuring others or committing a crime to "feed his habit" – and character traits that would make an enhanced sentence appropriate – not admitting his drug problem and accepting responsibility – were not present. (Appellant's Br. p. 9).

Noland was sentenced under Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005. Under this scheme, "Indiana's appellate courts can no longer *reverse* a sentence because the trial court abused its discretion by improperly finding and weighing aggravating and mitigating circumstances[;]" appellate review of sentences in Indiana is now limited to Ind. Appellate Rule 7(B). *McMahon v. State*, 856 N.E.2d 743, 748-49 (Ind. Ct. App. 2006) (emphasis added). Thus, the burden is on the defendant to persuade this court that his or her sentence is inappropriate. *Id.* at 749.

Nonetheless, an assessment of aggravating and mitigating circumstances is still relevant to our review for appropriateness under the rule, which states: "The [c]ourt may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Id.* at 748-49; *see* Indiana Appellate Rule 7(B).

With respect to mitigating factors, it is within the trial court's discretion to determine the existence and weight of significant mitigating circumstances. *Williams v. State***,** 840 N.E.2d 433, 438 (Ind. Ct. App. 2006), *reh'g affirmed*. The trial court is under no obligation to find any mitigating factors and has immense discretion when assigning weight to recognized mitigators. *Banks v. State*, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), *trans. denied*. Further, a single aggravating factor is sufficient to support the imposition of an enhanced sentence. *Hayden v. State*, 830 N.E.2d 923, 929 (Ind. Ct. App. 2005), *trans. denied*.

It is true, however, that Noland should realize a benefit for his guilty plea. *See Williams v. State*, 430 N.E.2d 759, 764 (Ind. 1982), *reh'g denied* ("A defendant who willingly enters a plea of guilty has extended a substantial benefit to the [S]tate and deserves to have a substantial benefit extended in return.") This is not to say the substantial benefit must be at sentencing. There are situations when a defendant greatly benefits from a guilty plea, and as a result may not be so deserving of a benefit at sentencing. If, for example, the benefit is in exchange for pleading guilty a benefit must not also necessarily be extended at sentencing. *See Sensback v. State*, 720 N.E.2d 1160, 1165 n.4 (Ind. 1999) (defendant's benefit was received when the State amended the

charge from a Class A felony carrying twenty to fifty years to a Class B felony carrying six to twenty years). In Noland's case, he undoubtedly received a benefit at the time he pled guilty. He was charged with a Class C felony, a Class D felony, and two misdemeanors, and he was allowed to plead guilty only to the Class D felony. Thus, it is not necessary that a benefit be extended to him at sentencing.

Turning our attention to Noland's character and the nature of this offense, we find Noland's sentence was appropriate. A review of the record indicates Noland has an extensive criminal history. He has one Class B felony conviction as an adult and one true finding as a juvenile that would be a Class C felony if he were an adult. And, while he has not been convicted of a felony since 1990, he has in the interim amassed twelve misdemeanor convictions and had his probation revoked five times. Noland also has a history of drug and alcohol abuse. Thus, Noland's character supports the sentence imposed by the trial court.

Further, the nature of this crime supports an enhanced sentence. In the early morning hours of September 2, 2005, Noland was found in a vehicle with an unlicensed driver who drove him to procure more alcohol after he was already intoxicated and in possession of unprescribed pills. While we will not speculate as to the fate of the unlicensed driver, Noland argues that the instant offense would have been worse had it "been part of the commission of some larger crime . . . intended to fulfill [his] 'need' for the drug." (Appellant's Br. p. 9). We are not persuaded by Noland's arguments that the nature of this crime is such that an enhanced sentence is inappropriate.

## CONCLUSION

Based on the foregoing, we find Noland's three year sentence to be appropriate.

Affirmed.

KIRSCH, J., and FRIEDLANDER, J., concur.